



CALIFORNIA DEPARTMENT OF  
FOOD & AGRICULTURE  
A. G. Kawamura, Secretary

DMS Notice  
QC – 08 – 8

November 5, 2008

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: **Target Corporation Settlement**

Attached is a stipulation and final judgment involving recent litigation against Target Corporation for violations of the California Business and Professions Code Section 12024.2. We are again very pleased with the fine work done on behalf of the people, by the prosecution team representing Contra Costa, Fresno, Santa Cruz, Marin, and Sonoma County District Attorneys. The settlement specified more than \$1.7 million and includes reimbursements for investigative costs.

The prosecuting counties named above should report these penalties as received by each county in the County Monthly Report (CMR). All participating counties should also separately record their individual investigative cost reimbursements in the appropriate columns in the report. We in weights and measures are pleased with the continued support and hard work from the participating district attorneys.

Sincerely,

Edmund E. Williams

Cc QC Special Investigators  
Kevin Masuhara, Director, County/State Liaison

1 ROBERT J. KOCHLY, District Attorney of Contra Costa County  
2 STEVEN C. BOLEN, Deputy District Attorney  
3 State Bar Number 141962  
4 627 Perry Street  
5 Martinez, California 94553  
6 Telephone: (925) 646-4523  
7 Facsimile: (925) 646-4683

8 (For list of additional plaintiff's counsel,  
9 see attached Exhibit 1)

10 Attorneys for Plaintiff

11  
12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **FOR THE COUNTY OF CONTRA COSTA**

15 PEOPLE OF THE STATE OF CALIFORNIA,

16 Plaintiff,

17 vs.

18 TARGET CORPORATION,

19 Defendant.

Case No.:

20 **STIPULATION FOR ENTRY OF**  
21 **FINAL JUDGMENT**

22 Plaintiff, the People of the State of California, appearing through its attorneys, Robert J.  
23 Kochly, Contra Costa County District Attorney, by Steven C. Bolen, Deputy District Attorney;  
24 Stephan R. Passalacqua, Sonoma County District Attorney, by Matthew T. Cheever, Deputy District  
25 Attorney; Edward S. Berberbian, Marin County District Attorney, by Robert E. Nichols, Deputy  
26 District Attorney; Elizabeth Egan, Fresno County District Attorney, by Michael Brummel, Deputy  
27 District Attorney; and Bob Lee, Santa Cruz County District Attorney, by William Atkinson, Assistant  
District Attorney and Defendant Target Corporation, appearing through its attorneys Morrison &  
Foerster, by David F. McDowell, hereby stipulate and agree as follows:

Page 1 of 5

People v. Target Corporation  
STIPULATION FOR ENTRY OF FINAL JUDGMENT

la-993677

1           1.       That the proposed Final Judgment, a copy of which is attached hereto as Exhibit 1 and  
2 incorporated by reference, may be signed by any judge of the Superior Court of the State of California,  
3 for the County of Contra Costa, and entered by the clerk without notice, provided that this Stipulation  
4 for Entry of Final Judgment has been executed by counsel and parties listed below;

5           2.       That Defendant waive its right to appeal, or attempt to set aside or vacate the Final  
6 Judgment entered pursuant to this Stipulation;

7           3.       That the parties consent to the entry of the Final Judgment prior to the taking of any  
8 proof, without trial or adjudication of any issues of law or fact and without this Stipulation for Entry of  
9 Final Judgment constituting evidence or an admission of liability or wrongdoing by Target  
10 Corporation;

11          4.       That the complaint on file in the above-captioned action state facts sufficient to  
12 constitute a cause of action upon which relief may be granted;

13          5.       That Target Corporation agrees to be bound as of the date of the Court's signing of the  
14 Final Judgment in the form attached as Exhibit 2, and that the signatures of this Stipulation on behalf  
15 of Target Corporation constitute notice to Target Corporation of the Final Judgment and all of its  
16 terms, and Target Corporation waives any further notice or service of the Final Judgment.

17          6.       That this Stipulation may be executed in counterparts and be facsimile, each of which  
18 shall be deemed an original, and all of which, when taken together, shall constitute one and the same  
19 document.

20  
21 Dated: September \_\_, 2008

ROBERT J. KOCHLY, District Attorney  
County of Contra Costa

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24 By \_\_\_\_\_  
25 Steven Bolen, District Attorney  
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Dated: September \_\_, 2008

STEPHAN R. PASSALACQUA, District Attorney  
County of Sonoma

By \_\_\_\_\_  
Matthew T. Cheever, Deputy District Attorney

Dated: September \_\_, 2008

EDWARD S. BERBERIAN, District Attorney  
County of Marin

By \_\_\_\_\_  
Robert E. Nichols, Deputy District Attorney

Dated: September \_\_, 2008

ELIZABETH EGAN, District Attorney  
County of Fresno

By \_\_\_\_\_  
Michael Brummel, Deputy District Attorney

Dated: September \_\_, 2008

BOB LEE, District Attorney  
County of Santa Cruz

By \_\_\_\_\_  
William Atkinson, Assistant District Attorney

Dated: September \_\_, 2008

MORRISON & FOERSTER

\_\_\_\_\_  
David F. McDowell, Esq.  
Attorney for Defendant  
TARGET CORPORATION

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Dated: September 24, 2008

TARGET CORPORATION

By 

## **Exhibit 1**

**EXHIBIT 1**

ELIZABETH A. EGAN, District Attorney of Fresno County  
ROGER WILSON, Deputy District Attorney  
State Bar Number 192207  
2220 Tulare Street, Suite 100  
Fresno, CA 93721  
Telephone: (559) 488-2800  
Facsimile: (559) 448-2800

EDWARD S. BERBERIAN, District Attorney of Marin County  
ROBERT E. NICHOLS, Deputy District Attorney  
State Bar Number 100028  
3501 Civil Center Drive, Room 130  
San Rafael, CA 94903  
Telephone: (415) 499-6450  
Facsimile: (415) 499-3095

BOB LEE, District Attorney of Santa Cruz County  
WILLIAM ATKINSON, Deputy District Attorney  
State Bar Number 88933  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060  
Telephone: (831) 454-2400

STEPHAN PASSALACQUA, District Attorney of Sonoma County  
MATTHEW T. CHEEVER, Deputy District Attorney  
State Bar Number 191783  
Hall of Justice, Second Floor  
600 Administration Drive, Room 212-J  
Santa Rosa, CA 95403  
Telephone: (707) 565-2311  
Facsimile: (707) 565-2762

## **Exhibit 2**



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA

PEOPLE OF THE STATE OF CALIFORNIA, NO.

Plaintiff,

**FINAL JUDGMENT AND  
PERMANENT INJUNCTION  
PURSUANT TO STIPULATION**

v.

TARGET CORPORATION, a Minnesota  
corporation,

Defendant.

Plaintiff, appearing through its attorneys, Robert Kochly, District Attorney for the County of Contra Costa, by Steven C. Bolen, Deputy District Attorney; Elizabeth Egan, District Attorney for the County of Fresno, by Michael Brummel, Deputy District Attorney; Edward S. Berberian, District Attorney for the County of Marin, by Robert E. Nichols, Deputy District Attorney; Bob Lee, District Attorney for the County of Santa Cruz, by William Atkinson, Deputy District Attorney; and Stephan R. Passalacqua, District Attorney for the County of Sonoma, by Matthew T. Cheever, Deputy District Attorney; and Defendant, TARGET CORPORATION (also referred to herein as "Target"), appearing through its counsel, Morrison and Foerster, by David F. McDowell, Esq.; and

Plaintiff and Defendant having stipulated to the entry of this Final Judgment and Permanent Injunction prior to the taking of any proof and without trial or adjudication of any issue of fact or law; and

The Court having considered the pleadings;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

**JURISDICTION**

1. This action is brought under California law, and this Court has jurisdiction of the subject matter and the parties.

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1 the product is displayed and on the advertising board at the front of each store notifying  
2 customers of an incorrect Advertised Price; (2) any variance between an Advertised Price and the  
3 POS price when merchandise has been correctly stocked but inadvertently moved, transferred or  
4 transported to the wrong rack, shelf, display, or fixture by a customer; or (3) any variance which  
5 results in a consumer being charged a price lower than the Advertised Price. Defendant shall bear  
6 the burden of proof in establishing any exception under this subsection, when the alleged Pricing  
7 Discrepancy is brought to its attention within fourteen (14) days of the date on which the alleged  
8 Pricing Discrepancy occurred.

9 e. **"Report of Pricing Discrepancy"** means a report of a Pricing Discrepancy  
10 by any customer, any employee or agent of a government agency, or any employee of Target.

11 f. **"Weights and Measures Official"** means any representative of (i) the  
12 State of California Division of Measurement Standards, (ii) any California County Sealer, (iii)  
13 any Director of a California County Department of Agriculture, (iv) the California Attorney  
14 General, or (v) any California district or city attorney.

#### 15 **INJUNCTION**

16 4. Pursuant to Business and Professions Code sections 17203 and 17535, Enjoined  
17 Persons, and each of them, are permanently enjoined and restrained from directly or indirectly  
18 engaging in any of the following acts or practices:

19 a. Charging at the time of sale of a commodity, a value which is more than  
20 the price which is advertised, posted, marked, displayed or quoted, in violation of Business &  
21 Professions Code § 12024.2. Nothing herein will preclude Target from requiring that the  
22 consumer present the applicable advertisement or coupon at POS as a condition of obtaining the  
23 Advertised Price. However, any such presentment requirement must be clearly and conspicuously  
24 disclosed in the advertisement and/or coupon; and,

25 b. Making or causing to be made any false or misleading statement to the  
26 public with respect to the price of items offered for sale.

1 **COMPLIANCE PROGRAM**

2 5. Pursuant to Business and Professions Code sections 17203 and 17535, and subject  
3 to the provisions of Business and Professions Code sections 17207 and 17535.5, Target is hereby  
4 enjoined and restrained from directly or indirectly using any type of scanning system at an  
5 existing or future California Target store unless Target maintains for a period of four (4) years  
6 from the date of entry of this Final Judgment, in every existing Target store in California, and in  
7 every new Target store to be opened in California during the four (4) year period, a program to  
8 enhance pricing accuracy and correct pricing errors. This program shall include at least all of the  
9 following:

10 a. **POLICIES AND PROCEDURES.** Target shall promptly implement  
11 written pricing accuracy policies and procedures ("**Policies and Procedures**") that incorporate  
12 the provisions in the Final Judgment. The Policies and Procedures shall be maintained in a  
13 **Pricing Compliance Binder ("PCB")** maintained in each Target store in California.

14 b. **SIGNATURE AND ACKNOWLEDGEMENT.** All Target pricing  
15 personnel (as designated pursuant to subsection (c) below) shall be required to read the Policies  
16 and Procedures and sign an acknowledgement that they have read them and understand them.  
17 Target shall confirm its compliance with this provision by providing a sworn legible declaration  
18 to said effect, executed by an executive charged with responsibility for pricing programs to  
19 Steven C. Bolen, Contra Costa County District Attorney's Office, 627 Ferry Street, Martinez,  
20 94553, by certified mail no later than one hundred and twenty (120) days from the entry of the  
21 Final Judgment.

22 c. **APPOINTMENT OF PRICING PERSONNEL**

23 i. **CORPORATE PRICING PERSONNEL.** Target shall appoint  
24 one central **Pricing Compliance Captain ("PCC")** who shall be responsible for overseeing, with  
25 respect to all stores in California: (1) the maintenance of accurate prices in the Price Scanning  
26 System, (2) price changes, and (3) prompt reporting, research, and resolution of Pricing  
27 Discrepancies in the system or stores. The PCC may delegate duties to other Target employees,  
28 appoint "back-up" PCCs, or retain third-party providers as the PCC deems reasonable and

1 appropriate to assist with the PCC's responsibilities. The PCC shall be the designated corporate  
2 contact person for inquiries from Weights and Measures inspectors.

3 ii. **IN-STORE PRICING PERSONNEL.** Each Target store in  
4 California shall designate an employee or employees to act as its **Pricing Accuracy Team**  
5 **Leader(s) ("PATL")** to oversee pricing accuracy in that store, including the correction of signage  
6 errors and random in-store audits. The PATL may delegate duties to other Target employees,  
7 appoint "back-up" PATLs, or retain third-party providers, as the PATL deems reasonable and  
8 appropriate to assist with the PATL's responsibilities.

9 d. **RANDOM IN-STORE AUDITS BY TARGET PERSONNEL.** Every  
10 Target California PATL shall institute random in-store price-checking audits to be conducted by a  
11 Target employee or employees on a weekly basis.

12 i. Said employee(s) shall conduct such random in-store audit no less  
13 than once per calendar week.

14 ii. Said employee(s) shall conduct such in-store audit on no less than  
15 twenty five (25) randomly selected products per week, the majority of which will be items whose  
16 prices were changed in the previous fourteen days.

17 iii. If any Pricing Discrepancy is uncovered, said employee(s) will take  
18 the necessary steps promptly to correct the Pricing Discrepancy.

19 iv. At the conclusion of the audit, said employee(s) shall inform the  
20 PATL of any Pricing Discrepancy that had been found in the audit.

21 v. Upon being informed of any Pricing Discrepancy found in the  
22 audit, the PATL shall confirm that the necessary steps to correct the error(s) have been taken and  
23 shall take any reasonable steps necessary to ensure that the Pricing Discrepancy has been  
24 corrected and to prevent such Pricing Discrepancies in the future.

25 vi. In the event two or more pricing errors are found in a random audit,  
26 the PATL shall notify the PCC about the finding of these errors, and the PATL shall endeavor in  
27 good faith to take prompt action to determine the cause of the pricing errors and undertake  
28 corrective action;

1                   vii. If the PATL investigates and determines that the Pricing  
2 Discrepancy was caused by a pricing error which extends beyond a single store, the PATL will  
3 promptly notify the PCC of the Pricing Discrepancy.

4                   viii. Said employee(s) shall record the results of each audit in the PCB,  
5 and the PATL shall retain said results of each audit in the PCB, and the PATL shall retain said  
6 results as provided in the "Retention of Records" provision herein. The recorded results of each  
7 audit shall include: (1) the date and approximate time of the audit, (2) the name and title of the  
8 person conducting the audit, (3) the number of items audited, (4) a list of pricing errors  
9 discovered, if any, during that audit and the corresponding items' description, correct price and  
10 scanned price, (5) a certification that the errors, if any, were corrected and a statement as to  
11 whether the PCC was notified, along with the time of the correction, if any, and notification, if  
12 any, and (6) the actions, if any, taken by the PCC and the determinations made pursuant to sub-  
13 paragraph (vii) above.

14                   e. **VERIFICATION OF ACCURATE SCANNER PRICING.** Each time  
15 an advertisement is distributed covering one or more products in two or more Target stores in  
16 California, Defendants shall cause the PATL of one designated California store to perform a price  
17 verification of a sample of all advertised items, to assure the advertised prices are scanning  
18 correctly on the effective date of the advertisement.

19                   f. **SIGN TAKEDOWN AUDITS.** Every Target California PATL shall  
20 conduct on a weekly basis an audit to verify that the promotional sign takedown process set forth  
21 in the PCB was properly completed. The audit will consist of a review of all promotional signs in  
22 one aisle chosen at random from each quadrant of the store (i.e. a total of four aisles will be  
23 audited each week.) The audit results will be placed in the PCB for inspection by the PCC. The  
24 results shall be maintained as provided in the "Retention of Records" provision herein.

25                   g. **END CAP AUDITS.** Every Target California PATL shall conduct an  
26 audit to verify that all endcaps have been set and all items priced accurately. The audits will be  
27 conducted twice each week. The audit results will be placed in the PCB for inspection by the  
28 PCC. The results shall be maintained as provided in the "Retention of Records" provision herein.

h. **IN-STORE REPORTS OF PRICING DISCREPANCIES.** Whenever a Target store employee receives a Report of Pricing Discrepancy, the employee shall promptly investigate whether there is an error or request a store PATL to investigate the error. If the employee investigates and determines that a Pricing Discrepancy exists, the employee shall notify the PATL. The PATL shall take appropriate action to resolve the Pricing Discrepancy as soon as reasonably practicable, including, if necessary, by notifying the PCC. The PATL shall keep a log of Pricing Discrepancies that shall be maintained as provided in the “Retention of Records” provision herein.

i. **REPORTS OF PRICING DISCREPANCIES TO THE PCC.** When the PCC receives a Report of Pricing Discrepancy, the PCC shall promptly investigate whether a system error at the corporate level occurred. If a system error at the corporate level is verified, the PCC shall ensure appropriate action is taken to correct the system error as soon as reasonably practicable. The PCC shall make its best efforts to correct a system error within twenty-four (24) hours of verifying the error. The PCC also shall endeavor in good faith to take prompt interim action, as necessary, pending the resolution of a Pricing Discrepancy or correction of a Price Scanning System error.

j. **EMPLOYEE TRAINING.** All employees of each Target store shall participate in initial training that will reference pricing accuracy and instruct employees how to handle guest complaints regarding pricing errors. In addition, Pricing Accuracy Team Members shall participate in training sessions not less than twice each year. The training will cover topics to improve price accuracy, including the following:

- i. Price accuracy awareness.
- ii. Instructions on how to perform price accuracy best practices and insure that they are consistently executed.
- iii. Instructions on how to address price accuracy issues with guests.

## RETENTION OF RECORDS

6. Target shall establish procedures to retain in-store audit records for at least one (1) year. Such records may be retained electronically rather than in paper copies and shall be made

1 available for inspection as soon as practical, but in any event not later than twenty-one (21) days  
2 from the date of the request of any Weights and Measures Official.

3 **MONETARY RELIEF**

4 7. Defendant shall pay to Plaintiff, upon signing of the Stipulation for Entry of Final  
5 Judgment, as and for costs, in the sum of One Hundred Two Thousand Two Hundred Two  
6 Dollars and Eighty Nine Cents (\$102,202.89) by check made payable to the Marin County  
7 District Attorney and delivered to Robert E. Nichols, Marin County District Attorney's Office,  
8 3501 Civic Center Drive, Room 130, San Rafael, California 94903. Said costs shall be distributed  
9 to the below listed entities as follows:

10 California Department of Measurement Standards	\$ 2,847.76
11 Alameda County Agricultural Commissioner	\$ 1,963.50
12 Contra Costa County Agricultural Commissioner	\$ 2,940.00
13 Fresno County Agricultural Commissioner	\$ 1,557.72
14 Kern County Agricultural Commissioner	\$ 410.64
15 Kings County Agricultural Commissioner	\$ 1,362.02
16 Los Angeles Agricultural Commissioner	\$ 35,964.86
17 Marin County Agricultural Commissioner	\$ 1,926.94
18 Merced County Agricultural Commissioner	\$ 463.25
19 Monterey County Agricultural Commissioner	\$ 1,568.50
20 Napa County Agricultural Commissioner	\$ 462.00
21 Placer County Agricultural Commissioner	\$ 625.00
22 Riverside County Agricultural Commissioner	\$ 5,022.67
23 San Benito County Agricultural Commissioner	\$ 346.28
24 San Bernardino County Agricultural Commissioner	\$ 4,452.75
25 San Diego County Agricultural Commissioner	\$ 8,558.59
26 San Joaquin County Agricultural Commissioner	\$ 1,238.62
27 Santa Barbara County Agricultural Commissioner	\$ 720.00
28 Santa Clara County Agricultural Commissioner	\$ 10,568.50
Santa Cruz County Agricultural Commissioner	\$ 1,144.00
Shasta County Agricultural Commissioner	\$ 4,642.67
Solano County Agricultural Commissioner	\$ 851.10
Sonoma County Agriculture Commissioner	\$ 3,995.00
Stanislaus County Agricultural Commissioner	\$ 711.58
Sutter County Agricultural Commissioner	\$ 752.94
Tulare County Agricultural Commissioner	\$ 812.00
Ventura County Agricultural Commissioner	\$ 6,294.00

26 8. As provided by and pursuant to Business and Professions Code section 17206 and  
27 17536, Defendant shall pay to Plaintiff, upon signing of the Stipulation for Entry of Final  
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1 Judgment, as civil penalties, the sum of One Million Two Hundred Ninety Three Thousand  
2 dollars (\$ 1,293,000) by check made payable to the Marin County District Attorney and delivered  
3 to Robert E. Nichols, Marin County District Attorney's Office, 3501 Civic Center Drive, Room  
4 130, San Rafael, California 94903. Pursuant to Government Code Section 26506 said civil  
5 penalties shall be divided equally and paid to the city or county of each of the prosecuting  
6 agencies bringing this action.

7 9. Defendant shall pay to Plaintiff, upon signing of the Stipulation for Entry of Final  
8 Judgment, the sum of Three Hundred and Twenty dollars (\$320.00) by check made payable to the  
9 Contra Costa County District Attorney and delivered to Steven C. Bolen, Contra Costa County  
10 District Attorney's Office, 627 Ferry Street, Martinez, 94553, reflecting the filing fee in this case,  
11 pursuant to Government Code section 6103.5.

12 10. The parties having stipulated, and the Court hereby finds, that it is impractical and  
13 impossible to identify or to provide direct restitution to consumers who may have unknowingly  
14 been charged an incorrect price for merchandise and that other forms of direct restitution are too  
15 impractical, costly, and would far exceed any benefit to individual consumers. Thus, Defendant  
16 shall pay restitution under the doctrine of cy pres pursuant to Business and Professions Code  
17 sections 17203 and 17535 as follows:

18 a. The sum of One Hundred Thousand Dollars (\$100,000.00), in the form of  
19 one hundred (100) individual Target gift cards for one-thousand dollars (\$1,000.00) each. Said  
20 gift cards shall be delivered to Robert E. Nichols, Marin County District Attorney's Office, 3501  
21 Civic Center Drive, Room 130, San Rafael, California 94903; for distribution to state and local  
22 agencies charged with enforcement of pricing accuracy including County Departments of Weight  
23 and Measures and California Department of Measurement Standards offices throughout the State.

24 b. The sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) as cy  
25 pres restitution to be divided equally between the Consumer Protection Prosecution Trust Fund  
26 established in the case of People v. ITT Consumer Financial Corporation (Alameda Superior  
27 Court No. 656038 0) and the California Agriculture Commissioner And Sealer's Association  
28 Quantity Control Trust Fund established pursuant to the Judgment in the People of the State of

1 California v. Safeway Inc., et al., Sonoma County Superior Court, Case No. 233008 filed July 7,  
2 2003. The payments required under this paragraph shall be made by one certified check payable  
3 to the "Marin County District Attorney's Trust Account" for distribution to the respective Trust  
4 Funds.

5 c. The sum of One Hundred Thousand Dollars (\$100,000.00) as cy pres  
6 restitution shall be paid to Marin Family Action. The Plaintiff shall assure that Marin Family  
7 Action uses these funds for the purpose of developing, promoting and distributing its Financial  
8 Literacy Program materials, said materials will include a curriculum, course materials and a  
9 course outline and will specifically provide information on how a consumer can assure they are  
10 correctly charged at the point of sale; said materials will be promoted statewide and made  
11 available by Marin Family Action to any California school (public or private) upon request. The  
12 payments required under this paragraph shall be made by one certified check payable to the  
13 "Marin County District Attorney's Trust Account" for distribution to Marin Family Action.

14 11. Defendant shall bear its own attorney's fees and costs.

15 **RETENTION OF JURISDICTION AND FINALITY**

16 12. The Court retains jurisdiction for the purpose of enabling any party to this Final  
17 Judgment to apply to the Court at any time for such further orders and directions as may be  
18 necessary and appropriate for the construction or carrying out of this Final Judgment; for the  
19 modification or termination of any of its injunctive provisions; and for the enforcement of,  
20 compliance with, and punishment of violations of the Final Judgment. The parties waive the right  
21 to appeal this Final Judgment as to form and content.

22 13. This Stipulated Final Judgment represents the complete and final settlement of all  
23 matters set forth in the Complaint filed contemporaneously with this Stipulated Final Judgment.  
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EFFECTIVENESS

14. This Final Judgment shall take effect immediately upon its filing and without the filing of a Notice of Entry of Final Judgment.
15. The Clerk is directed to immediately enter this Final Judgment.

DATED: \_\_\_\_\_ JUDGE OF THE SUPERIOR COURT